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**Subject:** Delta Plan Revisions (Feb 14 draft)

Joe, Terry – I am attaching a proposed revision to the Delta Plan (page 6-6) as we presented on the panel last week. We appreciate the opportunity to serve on the panel and to provide specific input on your evolving draft. Please call if you have any questions or thoughts. Thank you.

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## Proposed Revision to First Staff Draft (February 14, 2011) – Delta Plan

Revise the section on page 6-6 entitled “Provide a More Natural Flow Regime” to read as follows:

### Improve Management of Delta Flows to Optimize Public Trust Resources

*The following subgoals and strategies for restoring a healthy ecosystem shall be included in the Delta Plan: Restore Delta flows and channels to support a healthy estuary and other ecosystems. (Water Code Section 85302(e)(4))*

### Findings

**The Current Flow Regime Evolved to Meet Multiple Objectives Simultaneously.** The current Delta flow regime has evolved to attempt to meet a variety of needs at once: the needs to control high flows and prevent flooding throughout the Central Valley; the needs of native species (aquatic, avian or terrestrial) that reside in or migrate through the Delta; the needs of species (aquatic avian or terrestrial) that reside in or migrate through areas upstream of the Delta; the needs of introduced species that support a substantial recreation/tourism industry; the needs of agriculture to provide food and fiber to much of the Nation and the world; the desire to maintain an artificially low level of salinity within the Central and South Delta during summer and fall months to provide more consistent quality water; and provide for the needs of urban water suppliers located in the Bay Area and in Southern California to provide water to two-thirds of California’s population and most of its industrial production.

To meet the co-equal objectives of ecosystem restoration and water supply reliability, particularly in supporting a healthy ecosystem, it is not sufficient to attempt to restore “natural” flow regimes that may have unintended consequences given the current physical configuration of the Delta. As the Public Policy Institute of California has recently noted, “the Delta cannot be restored” and it thus proposes a different approach of “conservation by reconciliation.” Moreover, a “natural” flow regime may inadvertently create conditions that are optimal for the predation of migrating salmon smolts or juvenile delta smelt.

Instead, the focus of the ecosystem restoration co-equal goal should be on improving management of the Delta flow regime so as to **optimize conditions for all public trust resources** (e.g., resident fish, migratory fish, migratory waterfowl, recreational fishing, navigation and commerce) “whenever feasible” considering all other beneficial uses of the relevant water. This should be addressed in “before” and “after” settings with improved conveyance of water to export users. Consistent with the constitutional reasonable use doctrine and the application of that doctrine to public trust uses of water under the California Supreme Court’s *National Audubon* decision,<sup>1</sup> efforts to achieve the ecosystem restoration goal also should identify where the relevant biological objectives can be achieved through physical solutions, rather than flow measures. For example, given the potentially high water cost of increasing flows to address in-Delta predation, physical and management solutions to predation issues should be considered.

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<sup>1</sup> *Nat’l Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, 443.

This approach will require active adaptive management of the measures necessary to achieve the relevant biological objectives, as well as many of the other actions discussed in the Delta Plan, for the purpose of sustaining a healthy ecosystem composed of native species and a host of species from around the world. Such active adaptive management for a newly emerging ecosystem is the best way for the Bay-Delta Estuary to adapt to the many changes anticipated to occur due to climate change and to measure the effect/success of the various actions